

(g) We may ask you to keep or send other information necessary to implement this subpart.

### Subpart E—In-Use Testing

#### § 1045.401 What testing requirements apply to my engines that have gone into service?

(a) We may perform in-use testing of any engines subject to the standards of this part. If you produce outboard or personal watercraft engines that are subject to the requirements of this part, you must test them as described in this subpart. The testing requirements described in this subpart do not apply to sterndrive/inboard engines. This generally involves testing engines in the field or removing them for measurement in a laboratory.

(b) We may approve an alternate plan for showing that in-use engines comply with the requirements of this part if one of the following is true:

(1) You produce 200 or fewer engines per year in the selected engine family.

(2) You identify a unique aspect of your engine applications that keeps you from doing the required in-use testing.

(c) We may void your certificate of conformity for an engine family if you do not meet your obligations under this part.

(d) Independent of your responsibility to test in-use engines, we may choose at any time to do our own testing of your in-use engines.

(e) If in-use testing shows that engines fail to meet emission standards or other requirements of this part, we may pursue a recall or other remedy as allowed by the Clean Air Act (see § 1045.415).

#### § 1045.405 How does this program work?

(a) You must test in-use engines for exhaust emissions from the families we select. We may select up to 25 percent of your engine families in any model year—or one engine family if you have three or fewer families. When we select an engine family for testing, we may specify that you preferentially test engines based on the type of vessel. In addition, we may identify specific modes of operation or sampling times. You

may choose to test additional engine families that we do not select.

(b) The provisions of this paragraph (b) describe how test families are selected, depending on when we receive the application for certification.

(1) If we receive the application by December 31 of a given calendar year for the following model year (for example, by December 31, 2009 for model year 2010), we would expect to select engine families for testing by February 28 of the model year. If we have not completed the selection of engine families by February 28, you may select your own engine families for in-use testing. In this case, you must make your selections and notify us which engine families you have selected by March 31. You should consider the following factors in selecting engine families, in priority order:

(i) Select an engine family that has not recently been tested in an in-use testing regimen (and passed) under the provisions of this subpart. This should generally involve engine families that have not been selected in the previous two model years. If design changes have required new testing for certification, we would consider that this engine family has not been selected for in-use testing.

(ii) Select an engine family if we have approved an alternative approach to establishing a deterioration factor under § 1045.245(b)(8).

(iii) Select the engine family with the highest projected U.S.-directed production volume.

(2) If we receive an application for a given model year after December 31 of the previous calendar year, you must conduct in-use testing with that engine family without regard to the limitations specified in paragraph (a) of this section, unless we waive this requirement. We will generally waive testing under this paragraph (b)(2) only for small-volume engine manufacturers or in the case where similar testing was recently completed for a related engine family.

(c) Send us an in-use testing plan for engine families selected for testing as described in this paragraph (c). Complete the testing within 36 months after we direct you to test a particular engine family. Send us a complete in-

**§ 1045.410**

**40 CFR Ch. I (7–1–11 Edition)**

use testing plan according to the following deadlines:

(1) Within six months after we direct you to test a particular engine family.

(2) By February 28 of the following year if you select engine families for testing under paragraph (b)(1) of this section.

(3) Within six months after we approve certification for engine families subject to the requirements of paragraph (b)(2) of this section.

(4) If we request additional information or require you to modify your plan to meet the requirements of this subpart, you must provide the information or the modified plan within 30 days of our request.

(d) You may need to test engines from more than one model year at a given time.

(e) In appropriate extreme and unusual circumstances that are clearly outside your control and could not have been avoided by the exercise of prudence, diligence, and due care, we may allow more time to complete testing or we may waive the in-use testing requirement for an engine family. For example, if your test fleet is destroyed by severe weather during service accumulation and we agree that completion of testing is not possible, we would generally waive testing requirements for that engine family.

[73 FR 59194, Oct. 8, 2008, as amended at 75 FR 23020, Apr. 30, 2010]

**§ 1045.410 How must I select, prepare, and test my in-use engines?**

(a) You may make arrangements to select representative test engines from your own fleet or from other independent sources.

(b) For the selected engine families, select engines that you or your customers have—

(1) Operated for at least 50 percent of the engine family's useful life (see § 1045.103(e));

(2) Not maintained or used in an abnormal way; and

(3) Documented in terms of total hours of operation, maintenance, operating conditions, and storage.

(c) Use the following methods to determine the number of engines you must test in each engine family:

(1) Test at least two engines if you produce 2,000 or fewer engines in the model year from all engine families, or if you produce 500 or fewer engines from the selected engine family. Otherwise, test at least four engines.

(2) If you successfully complete an in-use test program on an engine family and later certify an equivalent engine family with carryover emission data, as described in § 1045.235(d)(1), then test at least one engine instead of the testing rates in paragraph (c)(1) of this section.

(3) If you test the minimum required number of engines and all comply fully with emission standards, you may stop testing.

(4) For each engine that fails any applicable emission standard, test two more. Regardless of measured emission levels, you do not have to test more than ten engines in an engine family. You may do more tests than we require.

(5) You may concede that the engine family does not comply before testing a total of ten engines.

(6) In appropriate extreme and unusual circumstances that could not have been avoided by the exercise of prudence, diligence, and due care, we may waive the in-use testing requirement for an engine family.

(d) You may do minimal maintenance to set components of a test engine to specifications for anything we do not consider an adjustable parameter (see § 1045.205(r)). Limit maintenance to what is in the owner's instructions for engines with that amount of service and age. Document all maintenance and adjustments.

(e) You may do repeat measurements with a test engine; however, you must conduct the same number of tests on each engine.

(f) For a test program on an engine family, choose one of the following methods to test your engines:

(1) Remove the selected engines for testing in a laboratory. Use the applicable procedures in subpart F of this part to show compliance with the duty-cycle standards in § 1045.103(a) or § 1045.105(a). We may direct you to measure emissions on the dynamometer using the test procedures in